Supreme Court, U.S.
FILED
APR 19 1991
OFFICE OF THE CLERK

No. 90-1443

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HERBERT C. SAVAGE

Petitioner,

vs.

TRAMMELL CROW COMPANY, INC.
AND
HERITAGE SECURITY SERVICES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF THE STATE OF
CALIFORNIA
FOURTH DISTRICT, DIVISION ONE

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

HERBERT C. SAVAGE in pro. per.
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(Telephone: None)

QUESTIONS PRESENTED

This case does not involve the questions erroneously presented by Respondent but are correctly stated as follows:

1. May Gospel tract distribution be barred from parking lots open to the public when others are not denied that First Amendment right?

2. May the court in the instant case bar First Amendment rights with no evidence of interference?

3. May the California courts invoke a religious exemption under California Code of Civil Procedure section 170.2 (a) to deny recusal and rehearing before an impartial judge, when the alleged "religious group" is a foreign state, a political body?

4. Do the United States treaties in force cited *infra*, require recognition of the "Holy See" as a political body, a state?

5. Which prevails over the other, California Code of Civil Procedure section 170.2(a), or Article VI of the United States Constitution?

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Respondent, Trammell, in its opposing brief No. 90-1443, rewrites the three part decision of the Court of Appeal of the State of California, Fourth District, Division One, printed in Appendices A, B, & C of the Petition, as being a state law decision!

Part I of the decision in *Savage* to bar Gospel tract distribution from the shopping center parking lot (petition Appendix A, pp. A5-A13) contains no less than seven citations of *Ward v. Rock Against Racism* __U.S.__ 109 S.Ct. 2746, (1989) (loud music disturbing residents adjacent to a **public park in New York**), as authority for barring Gospel tract distribution in the shopping center parking lot (see Petition Appendix A, pp. A9-A12).

The following federal cases are also relied on as authorities in the decision Part I (at Petition Appendix A, pp. A9-A12):

Clark V. Community for Creative Non-Violence
468 U.S. 288 (1984)

Heffron v. International Society for Krishna Consciousness, Inc.
452 U.S. 640 (1981)

Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.
425 U.S. 748 (1976)

United States v. Albertini
472 U.S. 675 (1985)

Frisby v. Schultz
487 U.S. 474 (1988)

Renton v. Playtime Theatres, Inc.
475 U.S. 41 (1986)

Prior to the seven *federal* authorities cited on the decision, the Court of Appeals preceded these authorities with the statement:

> [R]estrictions on such activity is nonetheless measured by *federal* constitutional standards.
> (See Petition Appendix A, p. A8)
> [emphasis added]

The Court states clearly in its decision Part I (Petition Appendix A, p. A8) that the basis of the decision is measured by federal constitutional standards and cites seven federal authoritites and the First Amendment [1] to the United States Constitution as authority.

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[1] Statutes, Rules, and Treaties involved printed at Petition Appendix H. First Amendment printed at Petition Appendix H, p. H2.

The transparent revision of the decision by Respondent Trammell of the decision Part I which denies distribution of The Gospel in the shopping center parking lot, reflects Respondent's reluctance to read the decisions Parts I & III of the *three* part decision for what they actually are! Pretending that decisions Parts I & III are interlocutory is nonsense! Access to the shopping center parking lot is denied to The Gospel of The Lord Jesus Christ by the Court's decision, Part I. Rehearing before an impartial judge is denied by the Court's decision, Part III.

IDENTIFICATION OF RESPONDENTS

With reference to the contested identification of repsondents in Opposition p. 2, fn 1, the following declaration under penalty of perjury was made by Ron Burns on behalf of the respondents:

> "8. In November, 1988 **Trammell Crow Company** retained **Hertiage Security Services, Inc**. to provide security for the plaza.
>
> . . .
>
> **I declare under penalty of perjury that the foregoing is true and correct** and that this Declaration was executed by me this 6/15/89 day of June, 1989, in San Diego, California.
> ss Ron Burns"

See pages 4 & 7 of Declaration of Ron Burns In Opposition To Motion For Preliminary Injunction attached to Memorandum of Points And Authorities in Opposition to Motion For Preliminary Injunction **filed in the Superior**

Court of California, County of San Diego, June 16, 1989 by Robert M. Gans, Attorney for Defendants, and is part of the record below.

CONCLUSION

Review of the desicion for discriminatory denial of the right of free speech to a distributor of The word of God, *but not others*, and denial of the right of hearing before an impartial judge, is important, substantial, and by no means premature! Any further action in the lower courts can have no relevance in these decisions extant in Part I and Part III of the decision.

In light of Respondent Trammell's inability to face the issues presented in the Petition without gross distortion of the *Savage* decision in Part I, and the complete inability to face the issues presented in the *Savage* decision Part III, ie: the denial of rehearing before an impartial judge, the need for plenary review is indisputable. Petitioner suggests summary reversal in the alternative.

Respectfully Submitted

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Post Office Box 126982
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(Telephone: none)

"THAT THE WORD OF THE LORD MAY HAVE FREE COURSE, AND BE GLORIFIED."

Holy Bible: II Thessalonians 3:1(b)